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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

In re S.H. et al., Persons Coming Under the
Juvenile Court Law.

B237136
(Los Angeles County
Super. Ct. No. CK89092)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

JOSE H.,

Defendant and Appellant.

APPEAL from orders of the Superior Court of Los Angeles County. Timothy R. Saito, Judge. Affirmed.

Roland Koncan, under appointment by the Court of Appeal, for Defendant and Appellant.

John F. Krattli, Acting County Counsel, James M. Owens, Assistant County Counsel, Emery El Habiby and Navid Nakhjavani, Deputies County Counsel, for Plaintiff and Respondent.

No appearance for Minors.

* * * * *

Appellant Jose H. (Father) appeals from the juvenile dependency court's jurisdictional order pertaining to minor S.H. Father contends there was insufficient evidence to support the court's jurisdictional finding under Welfare and Institutions Code section 300, subdivision (b)¹ and the dispositional findings and orders.

We are satisfied that substantial evidence supports the jurisdictional findings and dispositional orders and affirm.

FACTUAL AND PROCEDURAL BACKGROUND

The subject of this appeal, S.H. (born May 2011), has three half-siblings, Na.C. (born July 1994), No.C. (born January 2000) and Ni.C. (born July 2001).² Mother is the mother of all four children. Mother is not a party to this appeal, nor is Jose C., the father of S.H.'s half-siblings.

S.H. came to the attention of the Los Angeles County Department of Children and Family Services (DCFS) at birth when hospital personnel made an emergency referral to DCFS because the newborn tested positive for methamphetamine. According to the July 27, 2011 DCFS detention report, S.H. was born "prenatally exposed to methamphetamine" and Mother "also tested positive for methamphetamine." During the initial investigation Mother admitted past methamphetamine use but stated that she had last used methamphetamines in 1997 and had remained clean until one week before the birth of S.H. Mother stated that Father used to drink alcohol but had not done so for the past two years and she denied that he used drugs. Father was "in shock" when he heard Mother and S.H. tested positive for methamphetamine because he had never seen Mother

¹ All further statutory references shall be to the Welfare and Institutions Code unless otherwise noted.

² S.H.'s half-siblings' first names all begin with the same letter but to avoid confusion will be referred to as shown.

use any drugs or be under the influence of a controlled substance. Father denied any drug use.

A DCFS Safety Plan released S.H. to Father who resided with his mother, Yolanda H. Mother was not to reside in the home or have unmonitored contact with S.H. S.H.'s half-siblings remained in the home of their paternal grandparents, Frank and Alicia C. Father submitted to an on-demand drug test and the result was negative. Mother also tested negative for drugs during this time and enrolled in a substance abuse program. Prior to the detainment Mother and her three older children lived with Frank and Alicia C. and Mother was to return there when she completed four consecutive sessions of the program and remained drug free.

On July 5, 2011, Mother informed DCFS that Father was incarcerated. He had been arrested the previous day for taking her van without her consent. The Sheriff's Department told Mother that the area where the van was recovered and Father was arrested was "well known for drug trafficking." Mother told DCFS that over the previous weeks S.H.'s paternal grandmother Yolanda H., had repeatedly called Mother to come over to take care of S.H. because Father left for days at a time. Mother stayed at Yolanda H.'s home from June 29, 2011 to July 1, 2011. When Mother left she took S.H. with her. Mother suspected that Father was using drugs. She also informed DCFS that Father was verbally and physically abusive to her, and threatened to kill her if she told the truth about his drug use. S.H. was placed in the C.'s home with her half-siblings.

On July 7, 2011, Father met with DCFS and confirmed that he had been arrested but stated that Mother had made a false accusation and that the charges had been dropped. Father denied ever been abusive to Mother. He stated that Mother was verbally abusive to him and that she used drugs. Father denied leaving S.H. for days at a time and stated that when his job took him out of town he always made arrangements with his mother to take care of S.H. Father stated that he had returned on July 2, 2011 and Yolanda H. told him that Mother had taken S.H. with her. Father stated that he did not do anything to locate them because he had to go to work. Father acknowledged that he was aware that Mother was not to be alone with S.H. and when asked by DCFS why he did

not notify the police or DCFS when Mother disappeared with S.H., he stated that he did not want to get Mother into trouble.

Mother admitted using drugs and said that she and Father were currently using methamphetamine and had done so around the time S.H. was born. She said she was afraid that DCFS would take her children away if she told them the truth. Mother stated that she no longer wanted S.H. released to Father because of his drug use and because paternal grandmother Yolanda H.'s boyfriend was a registered sex offender and regularly visited the home.

Father again denied drug use and said that his prior convictions for being under the influence of a controlled substance involved alcohol, not drugs. He apologized for not being honest and for failing to inform DCFS of his prior convictions. Father acknowledged that he had heard that his mother's boyfriend had committed a crime with a minor and that he and his mother knew that they were not supposed to leave any children under his supervision or alone with him. Father said he was "sorry" and didn't know why he failed to report such important information to DCFS.

Father and Mother agreed with the revised DCFS Safety Plan on July 8, 2011, which placed S.H. with maternal great-aunt Sheila G.

The following day Sheila G. informed DCFS that Mother appeared at her house with the intention of spending the night. Mother was hyper, loud, and emotionally disturbed and Sheila G. thought that she was under the influence of a controlled substance. When Sheila G. and other family members checked the van in which Mother had arrived, they found Father hiding under some blankets. Father also appeared to be under the influence of a controlled substance because his eyes were red. Mother's adult daughter, Sabrina C., believed that Father was under the influence of a controlled substance because he appeared to be agitated and his eyes were red. Mother was arrested and placed on a psychiatric hold because she threatened to hurt herself. On the way to the hospital she said she did not intend to hurt herself and wanted to be admitted to drug rehabilitation.

On July 19, 2011, Sheila G. informed DCFS that she found a methamphetamine pipe hidden inside S.H.'s diaper bag. Mother told Sheila G. that the pipe belonged to Father.

On July 20, 2011, Father told DCFS that neither he nor Mother used any drugs on July 9, 2011, he was not hiding in the back of the van, and the methamphetamine pipe did not belong to him. He stated that he did not use any drugs and had no idea how the pipe got there and that it "probably" belonged to Mother.

On July 21, 2011, DCFS met with Mother at her rehabilitation program. Mother told DCFS that Father made her smoke methamphetamine on July 9, 2011 "one more time together" with him before she entered rehabilitation. She said that Father called her every day and told her not to tell DCFS anything about his drug use. She said the reason his DCFS drug tests are negative is because he uses someone else's urine. Mother signed an affidavit stating that: (1) she and Father both smoked methamphetamine on July 9, 2011; (2) Father buys and provides the methamphetamine; and (3) Father hid the pipe in the baby's bag.

Section 300 Petition

On July 27, 2011, DCFS filed a dependency petition on behalf of S.H. and her half-siblings. The petition alleged that Mother had a history of substance abuse and was a current user; S.H. was born with a positive toxicology for methamphetamine; Mother was incapable of providing the children with care; and Father failed to take any action to protect the children when he knew of Mother's drug use (§ 300, subd. (b)(2)). The petition also alleged that Mother and Father had a history of violent altercations; Father had inflicted bruises on Mother's body; and Father had threatened to kill Mother (§ 300, subd. (b)(4)). Furthermore, the petition alleged that Father was under the influence of methamphetamine on July 9, 2011, and was a current user which endangered S.H. (§ 300, subd. (b)(6)).

Father continued to deny drug use and ownership of the methamphetamine pipe and when informed by DCFS of the detention hearing said it was "bullshit" and that "everything [was] a lie."

At the detention hearing on July 27, 2011, the juvenile court found Father to be S.H.'s presumed father.³ The court ordered S.H. and her half-siblings detained with monitored visitation for the parents.

The jurisdiction/disposition report dated September 8, 2011 stated that Na.C. and No.C. were placed with their paternal grandparents, Frank and Alicia C., and S.H. and Ni.C. were placed with their maternal great-aunt, Sheila G. When interviewed by DCFS, S.H.'s half-siblings said that Mother and Father argued but they never saw any physical altercations. Yolanda H. stated that she did hear yelling and screaming but never observed her son hit Mother. Sheila G. never saw Mother and Father engage in physical altercations but she did see bruises on Mother's arms about a month after S.H. was born. The bruises were consistent with someone having grabbed Mother's arms.

Mother stated that she and Father moved to Las Vegas in 2005 or 2006. When Father suspected that Mother was cheating on him he threw a hard object through the window, breaking it, and slapped Mother. Mother's daughter, Sabrina C., who was 15 at the time, called the police and Father left. Mother also stated that Father hit her at least twice while she was pregnant with S.H. Father also used his fist to hit her on July 9, 2011 when she suffered a bruise on her right arm. Mother was scared that her children would be taken away if DCFS found out that Father was not taking care of S.H. and when she confronted him about it, he told her, "Bitch, I will kill you, if you tell."

DCFS continued to investigate Father's alleged substance abuse and discovered that he had been arrested three times for drug related charges. Father refused to be interviewed or make himself available to DCFS and provided no documentation to address his substance abuse history. Furthermore, Father did not inform DCFS of the type of visits, if any, he would like to have with S.H.

In a supplemental report filed October 19, 2011, DCFS reported that Mother had completed parenting and anger management classes and an in-patient drug treatment

³ The court also found Jose C. to be the presumed father of Na.C., No.C., and Ni.C.

program at Cedar House Life Change Center. Na.C. and No.C. remained placed with the C.'s, while Ni.C. and S.H. remained with Sheila G.

Adjudication Hearing

At the October 19, 2011 adjudication hearing, the juvenile court received into evidence the DCFS detention report dated July 27, 2011, the September 8, 2011 jurisdiction/disposition report, and the October 19, 2011 supplemental report. The court noted that a settlement had been reached with regard to Mother. Father's counsel argued that the allegations against him should be stricken because DCFS failed to show that he demonstrated neglectful conduct that caused serious harm or illness to S.H., and failed to show that the risk was ongoing.

County counsel argued that Father had not been honest with DCFS regarding his criminal history for substance abuse and the domestic violence issues. Mother confessed that she had used drugs and that she and Father had used them together beginning in 2004 and continuing until July 2011. Father had used other people's urine to obtain a negative drug test and physically threatened Mother if she exposed his drug use to DCFS. Incidents of domestic violence were documented in the reports submitted to the court. Witnesses heard yelling and screaming and observed Mother's bruises. Mother gave a detailed account of being slapped and punched by Father. The court trailed the matter to the following day to issue its ruling.

On October 20, 2011, the court sustained the allegation pertaining to violent altercations between the parents (§ 300, subd. (b)(4)). The court noted that Mother described the relationship as "somewhat dysfunctional" and that Father slapped and punched her including while she was pregnant with S.H. The court also noted Father's threats and statements that he would kill her if she disclosed the truth about his drug use and care of S.H.

The court sustained the allegations regarding Mother and Father's methamphetamine use (§ 300, subds. (b)(2) & (b)(6)). The court found that Mother "consistently [gave] a detailed account of all hers and Father's past and recent meth use in this case." The court found that Father was aware of Mother's past drug use and that

she currently had a problem. Each parent's accusation of the other regarding ownership of the pipe found in S.H.'s diaper bag indicated to the court that each parent was aware of the other's involvement with drug usage.

The court removed custody of all four children from Mother and their fathers and declared the children dependents of the court under section 300, subdivision (b). The court found by clear and convincing evidence that there was substantial danger if the children were returned home, and there were no reasonable means to protect their well-being without removing them from the custody of Mother and Father. Mother and Father were granted monitored visitation by a DCFS-approved monitor with discretion to liberalize. Mother was ordered to complete DCFS-approved parenting and drug treatment programs but did not have to duplicate any programs she had already completed. Father was ordered to attend a drug and alcohol program with aftercare and participate in random or on-demand drug and alcohol testing. He was also ordered to attend a domestic violence program and attend parenting classes to address developmentally appropriate issues and to receive individual counseling to address parental and adult responsibilities. Father timely appealed.

DISCUSSION

Father contends the juvenile court's jurisdictional findings under section 300, subdivision (b) and order removing S.H. from his custody are not supported by substantial evidence. Specifically, Father contends that the evidence consisted of Mother's uncorroborated statements which he argues were not credible.

I. Substantial Evidence Supports the Court's Jurisdictional Findings

A. *Standard of Review*

Challenges to a juvenile court's jurisdictional findings are reviewed for substantial evidence. (*In re Kristin H.* (1996) 46 Cal.App.4th 1635, 1649; *In re Clara B.* (1993) 20 Cal.App.4th 988, 1000.) Substantial evidence is evidence that is "reasonable, credible and of solid value" such that a reasonable trier of fact could make such findings. (*In re*

Christina A. (1989) 213 Cal.App.3d 1073, 1080.) “We review the record to determine whether there is any substantial evidence, contradicted or not, which supports the court’s conclusions.” (*In re Kristin H.*, *supra*, at p. 1649.) ““All conflicts must be resolved in favor of the respondent and all legitimate inferences indulged in to uphold the verdict, if possible.”” (*Ibid.*) Issues of fact and credibility are questions for the trial court and it is not our function to redetermine them. (*In re Rubisela E.* (2000) 85 Cal.App.4th 177, 195.)

Section 300, subdivision (b) provides, in relevant part, that a child may fall within the jurisdiction of the juvenile court if that “child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of the failure or inability of his or her parent or guardian to adequately supervise or protect the child, or the willful or negligent failure of the child’s parent or guardian to adequately supervise or protect the child from the conduct of the custodian with whom the child has been left.” (§ 300, subd. (b).) Three elements are necessary for a jurisdictional finding under section 300, subdivision (b): “(1) neglectful conduct by the parent in one of the specified forms; (2) causation; and (3) ‘serious physical harm or illness’ to the minor, or a ‘substantial risk’ of such harm or illness.” (*In re Rocco M.* (1991) 1 Cal.App.4th 814, 820.)

B. Analysis

Father disregards the standard of review on appeal. He asks us to reweigh the evidence and question Mother’s credibility and the DCFS reports. Father’s sufficiency of evidence argument is based on his assertion that Mother was not credible. But the trial court found Mother credible.

Father contends that S.H. was taken into protective custody, declared dependent, and removed from his custody based on uncorroborated allegations by Mother of his methamphetamine use. Father argues that “Mother’s statements were the sole evidence revealed in the record that supported that count.” This argument effectively asks us to pass judgment on Mother’s credibility, resolve conflicts in the evidence in Father’s favor,

and conclude that the weight of the evidence lies with him. That is not our role. (*In re Cole C.* (2009) 174 Cal.App.4th 900, 915–916.)

Contrary to Father’s assertions, Mother’s statements were not the sole evidence in the record that supported the court’s finding that Father was a current user of methamphetamine. On July 9, when Father was discovered hiding under blankets in Mother’s van, both Sheila G. and Mother’s adult daughter stated that Father was agitated, his eyes were red and he appeared to be under the influence of a controlled substance.

Additional evidence supporting the juvenile court’s finding of methamphetamine use was: (1) Father’s criminal record which included three arrests related to drug use or drug possession; (2) the area in which Father was arrested on July 4th, 2011 for taking Mother’s van was known for drug trafficking; (3) Mother’s admission that she and Father smoked methamphetamines on a number of occasions including prior to giving birth to S.H., as well as S.H.’s positive toxicology at the time of her birth; and (4) the methamphetamine pipe was found in S.H.’s diaper bag which Mother said belonged to Father.

We also disagree with Father’s contention that the sole evidence supporting the court’s finding that he had a history of engaging in violent altercations with Mother was her uncorroborated statements. While paternal grandmother Yolanda H. reported that she never saw her son strike Mother, but did see Mother strike him, she also reported hearing Mother and Father “yelling and screaming” but believed that they “wouldn’t do it in front of the kids.” Additionally, Sheila G. stated that she saw bruises on Mother after S.H. was born that looked like someone had grabbed her arm.

Father asserts that taking Mother’s story at face value is difficult because “Mother had major credibility issues as revealed by her drastically inconsistent statements reported by DCFS.” But that assertion overlooks Mother’s explanation that she lied about Father’s drug use and domestic violence *at his insistence* because she feared for her life after he threatened to kill her if she told the truth.

II. Substantial Evidence Supports the Court's Disposition Orders

Father challenges the removal of S.H. from his custody. A child shall not be removed from a home in the absence of clear and convincing evidence of a substantial danger to the child and no reasonable means to protect the child without removal. (*In re Henry V.* (2004) 119 Cal.App.4th 522, 525; § 361, subd. (c)(1); Cal. Rules of Court, rule 5.695 (d).) The court must consider the circumstances presented at the time of the disposition hearing. (*In re Jeremy C.* (1980) 109 Cal.App.3d 384, 394.) A removal order is reviewed for substantial evidence in the light most favorable to the juvenile court's findings. (*D.M. v. Superior Court* (2009) 173 Cal.App.4th 1117, 1120.)

Father contends that the juvenile court's dispositional findings were based upon erroneous jurisdictional findings rendered against Father but proffers no new basis upon which we should reverse the juvenile court's dispositional orders.

Section 361, subdivision (d) requires the court to "state the facts on which the decision to remove the minor is based." Father contends the court's failure to make such a statement was error. However, the omission is harmless because there is no reasonable probability that the statement, if made, would have been in favor of continued parental custody. (*In re Jason L.* (1990) 222 Cal.App.3d 1206, 1218.)

We also reject Father's argument that the juvenile court did not consider reasonable alternatives to protect S.H. without removal. Father does not propose what the court could have done and simply reasserts that a "more thorough review" of Mother's credibility would have eliminated the need for removal.

Father asks us to deduce from the lack of any on-the-record rejection of ineffective "alternatives" to removal that some *effective* alternative exists. This inverts our standard of review. It is Father's burden to proffer record evidence of an effective alternative to removal. (*In re Cole C., supra*, 174 Cal.App.4th at pp. 915–916.)

DISPOSITION

The jurisdictional and dispositional orders are affirmed.

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_____, J.

DOI TODD

We concur:

_____, P. J.

BOREN

_____, J.

ASHMANN-GERST